



Education Mandated Cost Network

Representing California school districts, county offices of education, and community colleges

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July 15, 2005

Ms. Paula Higashi, Executive Director
Commission on State Mandates
980 Ninth Street, Suite #300
Sacramento, CA 95814

Dear Ms. Higashi:

Please consider this letter as joining with the analysis (attached) provided to you by School Innovations and Advocacy (SI&A) regarding the reconsideration of the School Accountability Report Cards (SARC) I mandate by the Commission on State Mandates scheduled for rehearing on July 28, 2005. The Education Mandated Cost Network (EMCN) supports the SI&A analysis and urges the Commission to reject the staff's recommendation to overturn its decision of April 23, 1998 finding a reimbursable state mandate.

The EMCN represents local education agencies interests before the Commission and provides consulting services on mandate issues. The Network does not prepare mandate claims for school districts or county offices of education.

While members of the Network recognize the fiscal challenges facing the state, we also feel it is important to stress the state's constitutional obligation to reimburse local agencies for costs stemming from the implementation of state laws. School Accountability Report Cards is a prime example of a state law that has imposed both a new program and a higher level of service, thus requiring reimbursement from the state. We agree with the SI&A analysis which provides a detailed response to the issues raised at the May 26, 2005 hearing.

Sincerely,

Michael Johnston, Chair
Education Mandated Cost Network

Enclosures



SCHOOL INNOVATIONS
& ADVOCACY

July 8, 2005

Paula Higashi, Executive Director
Commission on State Mandates
980 9th Street, Suite 300
Sacramento, CA. 95814

Dear Ms. Higashi:

School Innovations and Advocacy (SI&A) submits the following comments regarding the reconsideration of School Accountability Report Cards (SARC) I, scheduled for rehearing on July 28, 2005. We appreciate the Commission's action to extend the comment period, but note that at this point it is difficult to determine which issues to raise since no new draft staff analysis is provided for the rehearing. We assume that the prior final staff analysis does not fully represent the current views of Commission staff given the significant differences between that analysis (Final Staff Analysis, Item 7) and the testimony by Commission staff and the Department of Finance (DOF) at the May 26, 2005 hearing. These comments reflect our best understanding of the positions asserted by Commission staff and the DOF, and we will provide additional comments in a timely manner if we fail to anticipate some of the arguments in the "revised" final staff analysis.

As a preliminary matter, based on the testimony by Commission staff at the May 26, 2005 hearing, it is our understanding that staff is no longer arguing that district claimants must prove that legislative amendments to the SARC require districts to expend local property tax revenues. Instead, we believe staff is asserting that because Proposition 98 created both a funding guarantee and the original SARC requirement, all Proposition 98 funds received by districts must be counted as offsets to the costs related to additional SARC requirements enacted by the Legislature. (See Reporter's Transcript of Proceedings, p. 168:14-16, 169:1-3; see also 133:14-19, 134:15-25, 150:18-21, 151:11-17.)¹ The DOF also chose not to support the local property tax argument. (Transcript, 147:15-17, 165:7-9.) So we assume that the local property tax argument found on page 17 of the prior Final Staff Analysis will be abandoned and that we need not comment on this issue.

¹ Commission staff kindly provided a copy of the Reporter's Transcript of Proceedings for the May 26, 2005 public hearing. We have attached a copy of the relevant sections of the Transcript and cite to it for convenience.

It appears that Commission staff and the DOF assert three distinct arguments for denial of reimbursement for SARC I. First, citing Government Code Section 17556(f), the DOF essentially argues that the original SARC was created by a statewide ballot measure and the language of the ballot measure specified minimum requirements but did not prohibit additional requirements, therefore no additional SARC requirements added by legislation can be reimbursable. (Transcript 145:19-147:9, 149:4-10, 165:2-9.) Second, Commission staff argues that Proposition 98 funds must be used to offset costs related to SARC amendments. (Transcript 168:14-16, 169:1-3.) Finally, staff argues that the legislative amendments to the SARC require only a minimal reallocation of resources that are insufficient to trigger a duty to reimburse by the State. (Final Staff Analysis, p. 16; Transcript 132:21-133:5.)

With regard to the DOF argument, there is no dispute regarding the original SARC requirements contained in Proposition 98 – pursuant to Government Code Section 17556(f) they are not reimbursable. The SARC I test claim is solely about the additional SARC requirements mandated by legislation – these legislative mandates are reimbursable as properly determined by the Commission on April 23, 1998. There is simply no legal authority for the proposition that the State has no duty to reimburse costs for subsequent legislative mandates related to a requirement initially established by ballot measure. The fact that the language of Proposition 98 allows for both the state and local districts to add items to the SARC is irrelevant (it seems most likely that the “not limited to” language cited by DOF (Transcript, 149:4-10) simply reflects the view that local districts should not be prohibited from adding helpful information to their SARCs). Government Code Section 17556(f) provides that “***duties that were expressly included in a ballot measure*** approved by the voters in a statewide or local election” are not reimbursable. (Emphasis added) The additional SARC requirements mandated by the Legislature were not “expressly included” in Proposition 98 and therefore do not fall into the exception to reimbursement contained in Section 17556(f).²

Similarly, there is no legal authority for the argument by Commission staff that Proposition 98 funds must be used as an offset to mandated costs from subsequent legislative amendments to the SARC. Staff cites *Department of Finance v. Commission on State Mandates* (2003) 30 Cal.4th 727, as support for this proposition. But that case deals only with “program funds” provided by the state that can be used to offset costs related to reimbursement claims for that specific program. (*Id.* at 746-47.) Proposition 98 contains a number of formulas (based on different economic situations) that create a minimum funding guarantee for K-14 education – Proposition 98 does not make an appropriation and cannot be described as program funding. Therefore, *Department of Finance v. Commission on State Mandates* provides no support for staff’s argument that all funds that count towards satisfying the Proposition 98 minimum guarantee³

² An additional point is warranted here. AB 2855, the statute that directs the Commission to reconsider the SARC I decision, specifies reconsideration “in light of federal statutes enacted and state court decisions rendered” since the legislative amendments were enacted. The DOF argument is not based on federal statutes or recent state court decisions, but on a new interpretation of Section 17556(f). Therefore the DOF argument is inconsistent with the legislative direction for reconsideration.

³ Since local property tax revenues count towards satisfaction of the minimum funding guarantee, this new staff theory is totally inconsistent with the arguments and cases cited on pages 17-18 of the Final Staff Analysis. As noted above, we assume staff has abandoned the local property tax theory and therefore we do not distinguish the *County of Sonoma* and *County of Fresno* cases cited in the Final Staff Analysis.

also count as program funding for the SARC. Staff's assertion of a "unique relationship" between Proposition 98 and the SARC (See Transcript, 133:14-19) that require all Proposition 98 funds be used as an offset is an interesting opinion, but one that has no basis in case law or any constitutional or statutory language.

Finally, Commission staff cites *County of Los Angeles v. Commission on State Mandates* (2003) 110 Cal.App.4th 1176, as support for the argument that the legislative amendments to the SARC are *de minimis* and do not mandate any increased costs, therefore no reimbursement is required.⁴ (Final Staff Analysis, p. 16.) However, staff provides no analysis of the costs of the various legislative mandates related to the SARC. Indeed, the Commission's prior ruling on these mandates suggest the cost is not minimal. The Commission adopted a statewide cost estimate for SARC I of \$1.7 million. It is our understanding that in order of total cost SARC I was 13th out of 30 claims for which estimates were made by the Commission for 2002-03. Does this mean that more than half of these 30 claims can be considered *de minimis* and not reimbursable? Staff should clearly state a standard by which SARC I costs can be measured to determine whether or not they are *de minimis*. Is there a dollar amount threshold? Is the standard based on the percentage of the legislative amendments costs compared to the total SARC costs? Is each legislative amendment assessed individually, or should the Commission look at the aggregate costs of all legislative amendments to determine whether costs are *de minimis*? Without such an analysis the argument that the legislative mandates related to SARC are *de minimis* is simply a stated conclusion rather than a finding based on evidence.

In conclusion, we believe that the Commission properly ruled on the SARC I test claim at the hearing on April 23, 1998, and none of the arguments advanced by Commission staff or the DOF support denial of the test claim on reconsideration. We respectfully request that the Commission reaffirm its prior ruling on the SARC I test claim.

Sincerely,

Abe Hajela
Chief Counsel

⁴ DOF rejects the *de minimis* argument – "it's our belief that it wasn't a cost issue, de minimis consideration type of analysis here that had the Legislature ask the Commission to reconsider this decision," and "I don't see de minimis discussions or property-tax discussions as really having much relevance to the issue here before the Commission." (Transcript, 167:20-23, 165:7-9.)